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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 480

GULF COAST SHRIMPERS AND OYSTERMANS ASSOCIATION, LOUIS S. SIMMONS, AND WALTER MCVEAY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. 27–41) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 6, 1956 (Pet. 42). The petition for a writ of certiorari was filed on October 5, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the indictment properly charged a violation of the Sherman Act.

2. Whether the District Court's instructions to the jury were insufficient with respect to petitioners' claimed antitrust exemption under the Clayton and the Norris-LaGuardia Acts.

STATUTES INVOLVED

Section 1 of the Sherman Act, Section 20 of the Clayton Act, and Sections 4 and 13 (c) of the Norris-LaGuardia Act are set forth in the Appendix, *infra*, pages 11–13.

STATEMENT

On April 1, 1953, an indictment was returned in the United States District Court for the Southern District of Mississippi charging petitioners (an association of shrimp and oyster fishermen, and two of its officials [1]) with violating Section 1 of the Sherman Act (R. 2–11). The indictment charged that the defendants, together with other persons unknown to the grand jury, had conspired and combined to restrain interstate and foreign commerce in shrimp and oysters in Mississippi waters by price-fixing. After trial by jury, petitioners were found guilty as charged (R. 896), and the Court of Appeals for the Fifth Circuit unanimously affirmed the convictions.

The indictment alleged that fishing operations in the area are conducted by the fishermen on a "joint

[1] Two other officials were indicted. One was acquitted by the district court, and the other died pending the appeal in the court below (R. 847–848).

venture basis" (Par. 4, R. 4); that the Association members "are not employees, workers, or laborers, but are independent businessmen engaged in business on their own account" (Par. 5, R. 5); and that "No employer-employee relationship" exists between fishermen and the approximately twenty-two Mississippi dealers to whom the catch is sold (*ibid.*)

The evidence shows that all commercial shrimp and oyster fishermen operating out of Mississippi ports are members of the Association (R. 455), including both crewmen and boat captains (R. 456). The boat captain alone selects his crew, both as to number (R. 563) and as to personnel (R. 135, 141, 192, 240, 283), and he alone is in charge of actual fishing operations (R. 489).

Members of the Association sell their catches directly to the dealers (R. 455). In order to do business with members, the dealers are required by Association rules to pack both shrimp and oysters (R. 543, 661, 760), to furnish ice without charge (R. 456, 127, 128), and to buy all catches offered to them by the fishermen (R. 255). The fishermen, however, are personally responsible for all expenses incurred on the voyage (R. 456, 457). Hence, the proceeds of each sale are first applied to expenses, after which the balance is equally divided among the boatowner, captain, and each crewman (R. 138, 370, 395, 456, 584). If, however, expenses are greater than the proceeds, the fishermen receive nothing (R. 318, 457).

Although most of the larger boats are owned by dealers (R. 513), the "big majority" of the smaller boats are owned by the fishermen themselves (R. 513).

Many of these fishermen purchase their own licenses (R. 300) and sell their catches to anyone they please (R. 287). Other fishermen own their boats but operate them under boat licenses purchased by the dealers, as required by an Association rule (R. 491, 539, 69). Although generally these fishermen sell to the dealer who purchased the boat license (R. 457), they may, and frequently do, sell to other dealers (R. 58, 756). Fishermen operating boats owned by the dealers agree to sell their catch to the boatowner (R. 283, 665), but may sell to other dealers to obtain a higher price (R. 135) or to prevent spoilage (R. 457).

Regardless of the type of boat used, all Association members are prohibited from selling shrimp or oysters below the prices set by the Association. Any member violating this prohibition is subject to a fine (R. 489, 535), suspension (R. 535), or forfeiture of the proceeds of the sale (R. 372).

In addition, the dealers were forbidden to purchase shrimp and oysters at prices below those fixed by the Association (R. 106, 462) or from nonmembers without the Association's consent (R. 60, 63, 65, 83, 106, 175, 229, 462). The Association compelled adherence to this rule by: boycotts (R. 322, 373, 460, 463, 650) and mass picketing (R. 104, 184, 235, 259, 355, 463, 672) of recalcitrant dealers;[2] by threats and

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[2] In July, 1951, the Association staged a "strike" to prevent nonmembers from unloading and selling their catches at Pascagoula. Evidence showed that the Association had called in all boats a week before (R. 674), that petitioner McVeay advised witness Dees of the strike the night before (R. 354), and that the Association paid for food for pickets (R. 611, 677) and for petitioner Simmons' trip to Pascagoula (R. 489, 546). When

other intimidation (R. 180, 184, 235, 237, 271); by physical violence to both person and property (R. 178, 180, 184, 214, 220, 234, 257, 259, 273, 355, 368); by preventing out-of-state fishermen from fishing in Mississippi waters or selling to Mississippi dealers (R. 83, 212, 235, 271, 273, 322, 462, 463, 532);[3] by compelling such fishermen to join the Association and observe its price schedules (R. 65, 103, 106, 175, 217, 229, 274, 662–663); and by preventing shipment of shrimp and oysters from other states to Mississippi packers (R. 63, 65, 541). Members who fail to boycott or picket recalcitrant dealers when directed to do so by the Association are subject to fines and other penalties (R. 291, 360, 536, 683).

The Association's prices, according to the testimony of the individual petitioners and others, were fixed by the Association's "price control committee" (R. 491, 459–460), in conjunction with certain dealers (R. 384, 509, 512, 534, 588, 619, 707, 766). The prices, once adopted, were binding on all dealers, however, regardless of whether they had any part in the setting of the prices (R. 772).

In upholding the convictions, the Court of Appeals in a careful opinion held that the indictment properly alleged a violation of the Sherman Act; that the

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asked whether the Association authorized the "strike," defendant Strong (now deceased) answered: "The members did it and I guess we were responsible for it, sure" (R. 677).

[3] Defendant Simmons, for example, admitted in a written statement (R. 462): "We do try to prevent boats manned by fishermen who are not members of our union from coming into our dealers and dumping their catch on our dealers, underselling our men and running our fishermen off."

court's charge to the jury was adequate; that the court had not erred in refusing to give petitioners' requested instructions; and that the evidence was sufficient to present a jury question whether petitioners had engaged in unlawful price-fixing (Pet. 40).

ARGUMENT

1. Petitioners contend (Pet. 16–20) that the "objects and purposes" clause of the Association's corporate charter (R. 45–46) shows that it is a labor organization; that a labor organization is not subject to Sherman Act prohibitions (*United States* v. *Hutcheson,* 312 U. S. 219) unless it combines with non-labor organizations (*Allen-Bradley Co.* v. *Local No. 3,* 325 U. S. 797); and that therefore the indictment is fatally deficient for failure to allege a combination between the Association and non-labor organizations.

The indictment, however, alleges that the members of the Association "are not employees, workers or laborers * * * but are independent businessmen engaged in business on their own account" (R. 5)—an allegation which must be taken as true in determining the sufficiency of the indictment. *United States* v. *Cook,* 17 Wall. 168, 178. Furthermore, the sufficiency of an indictment turns exclusively upon its allegations and the statute (*Local 36, Int'l Fishermen and Allied Workers of America* v. *United States,* 177 F. 2d 320, 326 (C. A. 9), certiorari denied, 339 U. S. 947; *United States* v. *Empire Hat & Cap Mfg. Co.,* 47 F. Supp. 395, 398, 401 (E. D. Pa.)), and there can be no recourse to facts outside the indictment, including self-serving statements in the corporate charter.

Since the indictment alleges that the Association is *not* a labor organization and presents "a plain, concise and definite written statement of the essential facts constituting the offense charged" (F. R. Crim. Proc. 7 (c)), the question of combination with non-labor organizations is immaterial in determining its sufficiency. As petitioners concede (p. 20), moreover, an indictment need not negative exemptions where, as here, the exemption is not part of the statute defining the offense. *McKelvey* v. *United States,* 260 U. S. 353, 356–357; *Edwards* v. *United States,* 312 U. S. 473, 482–483; *United States* v. *Cook, supra,* at 173–174.

Finally, the "objects and purposes" clause of the Association's charter, even if taken at face value, does not necessarily establish the Association as a labor group. The provision (R. 45–46), which emphasizes "the matter of securing better prices for our catches," is equally consistent with the indictment's allegation that the Association is composed of independent businessmen. In any event, petitioners can hardly defend on the ground that the Association's acts were "ultra vires." The test of liability is, of course, how the group in fact operates, and not how it labels itself. Cf. *United States.* v. *American Tobacco Co.,* 221 U. S. 106, 180–181.

2. Petitioners also attack the sufficiency of the trial court's instructions to the jury with respect to their claim that the Association is a labor organization and hence exempt under the Sherman Act (*United States* v. *Hutcheson,* 312 U. S. 219). In this connection, they contend (Pet. 11–12, 21–22) that the District Court failed properly to submit to the jury the question whether the members of the Association

were employees of the dealers to whom they sold their catch.

At petitioners' request, the trial court instructed that "unions and members of the unions" possess the rights to strike and exercise other concerted pressures (R. 838) and "to bargain collectively" (R. 840), and that the jury should return a verdict of Not Guilty if it should "find from the evidence, or lack of evidence, that the Defendants are a labor union, consisting of laborers and employees * * *" (R. 840).[4] These instructions left it to the jury to determine whether the Association was "a labor union, consisting of laborers and employees," and we submit that no further or more detailed instructions were required.[5]

If anything, as the court below held (Pet. 38), these instructions were more favorable than those to which petitioners were entitled. The only conduct which the Clayton and the Norris-LaGuardia Acts legalize under the antitrust laws are certain acts (specified in § 4 of the Norris-LaGuardia Act) which are done in the course of a "labor dispute" as defined in § 13 of the Norris-

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[4] The jury was also instructed that "even if you find that the Defendant Association is a *chartered labor organization*," it may nevertheless not conspire with nonlabor groups (R. 842).

[5] Petitioners rely (Br. 22) upon a number of Jones Act cases holding that it is a jury question whether a fisherman injured on a packer-owned boat is an employee of the packer. Aside from the objection to relying on Jones Act cases to determine whether an association is a labor union for Sherman Act purposes, it is clear that the many fishermen who own and operate their own boats could not be "employees" of the packers even for Jones Act purposes.

LaGuardia Act. *United States* v. *Hutcheson,* 312 U. S. 219. Here there was no "labor dispute" because the controversy concerned, not "terms or conditions of employment" (Norris-LaGuardia Act § 13), but only "the sale of commodities" (fish) to which "the Act was not intended to have application." *Columbia River Packers Ass'n., Inc.* v. *Hinton,* 315 U. S. 143, 145.[6] See Statement, *supra,* pp. 3–4. Since petitioners' conduct here, as in *Columbia River Packers,* fell outside the area of a "labor dispute," no further instructions under the Norris-LaGuardia and the Clayton Acts were warranted.

At all events, regardless of whatever labor exemption petitioners might otherwise have had, such exemption was lost when they combined with the dealers to fix prices. This combination was not only admitted by petitioners at the trial but in fact was shown by petitioners' own evidence. See Statement, *supra,* p. 5. The case thus falls squarely within the rule of *Allen-Bradley Co.* v. *Local No. 3,* 325 U. S. 797, that restraints by labor groups in combination with business organizations are subject to the Sherman Act. See also *Local 36* v. *United States,* 177 F. 2d 320, 332 (C. A. 9), certiorari denied, 339 U. S. 947; *McHugh* v. *United States,* 230 F. 2d 252, 254–255 (C. A. 1), certiorari denied, 351 U. S. 966; *Hawaiian Tuna Packers* v. *International Longshoremen's and*

[6] *Columbia River Packers* was followed in *Local 36, International Fishermen* v. *United States,* 177 F. 2d 320, 330 (C. A. 9), certiorari denied, 339 U. S. 947; and *Hawaiian Tuna Packers* v. *International Longshoremen's and Warehousemen's Union,* 72 F. Supp. 562, 566 (D. Hawaii).

Warehousemen's Union, 72 F. Supp. 562, 567 (D. Hawaii); cf. *Manaka* v. *Monterey Sardine Industries,* 41 F. Supp. 531, 536 (N. D. Calif.).

CONCLUSION

The decision below is correct, there is no conflict of decisions, and no other reason appears for the grant of review. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1956.

APPENDIX

Section 1 of the Sherman Act, 50 Stat. 693, 15 U. S. C. 1, provides in pertinent part as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor * * *.

Section 20 of the Clayton Act, 29 U. S. C. 52:

> No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.
>
> And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may law-

fully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Section 4 of the Norris-LaGuardia Act, 29 U. S. C. 104:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Section 13 (c) of the Norris-LaGuardia Act, 29 U. S. C. 113 (c):

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

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